

of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the bank upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC will decide whether to reclassify the bank and notify the bank of the FDIC's decision.

(b) *Request for rescission of reclassification.* Any bank that has been reclassified under this section, may, upon a change in circumstances, request in writing that the FDIC reconsider the reclassification, and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the FDIC, the bank shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the FDIC.

**§ 308.203 Order to dismiss a director or senior executive officer.**

(a) *Service of notice.* When the FDIC issues and serves a directive on a bank pursuant to § 308.201 of this part requir-

ing the bank to dismiss from office any director or senior executive officer under § 38(f)(2)(F)(ii) of the FDI Act, the FDIC shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive—(1) Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the FDIC at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement shall include reasons why the Respondent should be reinstated, and may include a request for an informal hearing before the FDIC under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the FDIC, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC concerning the Respondent's request for reinstatement with the bank.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC shall grant or deny the request for reinstatement and notify the Respondent of the FDIC's decision. If the FDIC denies the request for reinstatement, the FDIC shall set forth in the notification the reasons for the FDIC's action.

#### § 308.204 Enforcement of directives.

(a) *Judicial remedies.* Whenever a bank fails to comply with a directive issued under section 38, the FDIC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies—*(1) *Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of a bank to implement a capital restoration plan required under section 38, or subpart B of part 325 of this chapter, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the bank to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38 or subpart B of part 325 of this chapter through any other judicial or administrative proceeding authorized by law.

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